

NOTICES OF EMERGENCY RULEMAKING

Under the Administrative Procedure Act, an agency may determine that adoption, amendment, or repeal of a rule is necessary for immediate preservation of the public health, safety or welfare and the notice and public participation requirements are impracticable. Under this determination, the agency may adopt the rule as an emergency and submit it to the Attorney General for review. The Attorney General approves the rule and then files it with the Secretary of State. The rule takes effect upon filing with the Secretary of State and remains in effect for 180 days. An emergency rule may be renewed for one or two 180-day periods if the requirements of A.R.S. § 41-1026 are met. If the emergency rule is not renewed or the rule is not permanently adopted by the end of the 180-day period, the emergency rule expires and the text of the rule returns to its former language, if any.

NOTICE OF EMERGENCY RULEMAKING

TITLE 14. PUBLIC SERVICE CORPORATIONS, CORPORATIONS AND ASSOCIATIONS, SECURITIES REGULATION

CHAPTER 2. CORPORATION COMMISSION FIXED UTILITIES

PREAMBLE

- | | |
|-----------------------------|--------------------------|
| 1. Sections Affected | Rulemaking Action |
| Article 15 | New Section |
| R14-2-1501 | New Section |
| R14-2-1502 | New Section |
| R14-2-1503 | New Section |
| R14-2-1504 | New Section |
| R14-2-1505 | New Section |
| R14-2-1506 | New Section |
| R14-2-1507 | New Section |
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statutes: A.R.S. §§ 40-202, 40-203, 40-204, 40-241, 40-250, 40-251, 40-321, 40-322, 40-336, 40-361, 40-365, and 40-367
Constitutional authority: Arizona Constitution Article XV, §§ 2, 3, 4, 6, 7, and 9
Implementing statute: Not applicable.
- 3. The effective date of the rules:**
January 17, 1997
- 4. Is this rulemaking a renewal of a previous emergency rulemaking?**
Yes
If yes, the Register citation to previous notices of emergency rulemaking:
2 A.A.R. 3552, August 9, 1996
- 5. The name and address of agency personnel with whom persons may communicate regarding the rule:**
Name: Christopher C. Kempley
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- 6. An explanation of the rule, including the agency's reasons for initiating the rule:**
Pursuant to the Federal Communications Act of 1996, local exchange carriers are required to interconnect with any telecommunications provider requesting interconnection. If the companies are unable to agree on the terms and conditions for interconnection,

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the Act mandates that state commissions mediate and/or arbitrate these matters, if requested by any party to the negotiations. The Act does not specify the administrative details necessary to effectuate mediation and arbitration procedures. These rules establish state procedures for mediation and arbitration of interconnection agreements.

Under the Act, telecommunications carriers may request that the state commission arbitrate interconnection agreements during the 135th through 160th day following the request for negotiations to the local exchange carrier and the state commission is required to act on the request for arbitration within 9 months of when the request for negotiations was made. Many telecommunications carriers have made requests to negotiate with the local exchange carriers in Arizona. There are currently requests for arbitration pending before this Commission.

Because of the pending requests for arbitration, and the short time frame within which the Commission must act on those requests, it was necessary for the Commission to originally adopt these rules on an emergency basis. State law indicates that emergency rules expire within 180 days from their issuance. These rules are set to expire January 19, 1997. Because the Commission's Hearing Division is still in the process of arbitrating interconnection issues and because it is highly likely that there will be additional arbitration requests in the future, staff has recommended that the rules be renewed on an emergency basis for an additional 180 days. Staff has also recommended that the rules be made permanent and therefore has heretofore filed a Notice of Rulemaking Docket Opening and a Notice of Proposed Rulemaking with the Secretary of State.

7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable.

8. The summary of the economic, small business, and consumer impact

The rulemaking establishes procedures for arbitrating issues between telecommunications companies that are seeking to agree upon the terms of interconnecting their networks.

Under the Federal Telecommunications Act of 1996, telecommunications companies are required to interconnect their networks on terms that are just and non-discriminatory so that the public can have "seamless" service regardless of their local telephone company. Should companies reach an impasse in their interconnection negotiations, state commissions are required to arbitrate disputed issues.

Both incumbent and new entrant local exchange carriers, as well as interested 3rd parties will benefit by knowing the procedures the Commission will follow in resolving disputed issues.

These rules may not result in any increased out-of-pocket cost to the Commission, but will result in staff time being devoted to this new function. The rules should not result in any additional cost to other governmental bodies or political subdivisions unless either chooses to file comments on arbitration decisions. Parties to the arbitration would each be expected to bear their own costs. There are no costs to private persons or consumers. However, these groups will benefit from the added choices of competing telecommunications companies when interconnection agreements are successfully completed.

9. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable.

10. Incorporations by reference and their location in the rules:

Not applicable.

11. An explanation of the situation justifying the rule's adoption as an emergency rule:

These rules address issues that may significantly affect economic stability and thus impact the rates charged by public service corporations. Renewal of the emergency rules is necessary for the immediate preservation of the public health, safety, and welfare, and notice and participation requirements are impracticable.

12. The date of the Attorney General's approval of the emergency rule:

The Corporation Commission has determined that rules in this Chapter are exempt from the Attorney General certification provisions of the Arizona Administrative Procedure Act (A.R.S. § 41-104) by a court order (State of Arizona v. Arizona Corporation Commission, 114 Ariz. Adv. Rep. 36 (Ct. App. 1992)).

13. The full text of the rules follows:

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TITLE 14. PUBLIC SERVICE CORPORATIONS, CORPORATIONS
AND ASSOCIATIONS, SECURITIES REGULATION

CHAPTER 2. CORPORATION COMMISSION
FIXED UTILITIES

ARTICLE 15. ARBITRATION AND MEDIATION

Section

- R14-2-1501. Application of Rules
R14-2-1502. Definitions
R14-2-1503. Negotiation
R14-2-1504. Mediation
R14-2-1505. Arbitration
R14-2-1506. Filing and Service of Request for Approval of Interconnection Agreement
R14-2-1507. Approval Procedure

ARTICLE 15. ARBITRATION AND MEDIATION

R14-2-1501. Application of Rules

These rules govern procedures mandated by the Telecommunications Act of 1996, 47 U.S.C. § 252, regarding the mediation, arbitration, review, and approval of interconnection agreements.

R14-2-1502. Definitions

- A. "Arbitration" means an alternative dispute resolution process in which the Corporation Commission decides the matter in dispute after the parties have had an opportunity to present their respective positions.
- B. "Corporation Commission" or "Commission" means the regulatory agency of the state of Arizona that has jurisdiction over public service corporations operating in Arizona.
- C. "Duty to Negotiate in Good Faith" means that parties meet and confer at reasonable times and places with minds open to persuasion and with an eye toward reaching agreement on mandatory subjects of bargaining.
- D. "Interconnection Agreement" means a formal agreement between any telecommunications carriers providing or intending to provide telecommunications services in Arizona, setting forth the particular terms and conditions under which interconnection will be provided.
- E. "Mediation" means a voluntary alternative dispute resolution process in which a neutral 3rd party assists the parties in reaching their own settlement. The mediator does not have the power to impose a resolution. The role of the mediator and the goal of the process is to help the parties achieve their own resolution.
- F. "Petition for arbitration" means the petition requesting arbitration of open issues in the negotiation of an interconnection agreement.
- G. "Petitioner" means the party to the negotiation that files the petition for arbitration with the Commission.
- H. "Request for negotiation" means a formal request made by any telecommunications carrier providing or intending to provide telecommunications services in Arizona to another telecommunications carrier to negotiate an interconnection agreement.
- I. "Respondent" or "responding party" means the nonpetitioning party to the request for arbitration.

R14-2-1503. Negotiation

- A. A local exchange carrier receiving a request to negotiate shall notify the Commission when a request for negotiation has been made pursuant to 47 U.S.C. § 252. The notification shall include the names of the negotiating parties and the date of the request. The notification shall be served on all parties to the negotiation.

- B. Parties must notify the Commission regarding the status of the negotiation no later than 90 days after a request for negotiation has been made.

R14-2-1504. Mediation

- A. Any party negotiating an agreement under 47 U.S.C. § 252 may, at any point in the negotiation, ask the Commission to participate in the negotiation and to mediate any differences arising in the course of the negotiation.
- B. If a party requests mediation by the Commission, a non-hearing Division employee of the Commission will be appointed to act as mediator.
- C. A request for mediation shall contain a brief statement of the nature of the dispute and the names, addresses, telephone, and telefax numbers of the parties or their representatives. Copies of the request shall be served on all parties to the negotiation.
- D. The mediator shall have discretion to regulate the course of the mediation, including scheduling of mediation sessions, in consultation with the parties. The following general procedures apply:
1. The mediator will not impose a settlement, but can offer proposals for settlement;
 2. The mediator may meet individually with the parties or attorneys during mediation;
 3. Only the parties to the negotiation may attend the mediation session or sessions unless all parties consent to the presence of others;
 4. Parties shall provide the mediator with a brief statement of position and relevant background information prior to the first mediation session. The mediator may ask for this information to be supplemented;
 5. The mediator will not provide legal advice to the parties, nor will any mediator's statements as to law or policy be binding on the Commission, unless later adopted by the Commission;
 6. The mediation process is confidential, to the extent permitted by law. No stenographic record will be kept.
- E. All parties participating in a requested Commission mediation have a duty to negotiate in good faith. The mediator may terminate the mediation if it appears that the likelihood of agreement is remote or if a party is not participating in good faith, or for other good cause. Ordinarily, a mediation should not be terminated prior to the completion of at least 1 mediation session.

R14-2-1505. Arbitration

A. Filing and Service of a Petition for Arbitration

1. During the period from the 135th to the 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under 47 U.S.C. § 252(b)(1), any party to the negotiation may petition the Corporation Commission to arbitrate any open issues. The petition shall request arbitration of all issues which are unresolved at the time the petition is filed. Parties may continue to negotiate or otherwise resolve the disputed issues after arbitration is requested. The pendency of a mediation shall not bar a party from petitioning the Commission for arbitration.
2. An original and 10 copies of a petition for arbitration shall be filed with the Commission. The petitioner shall

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deliver to the respondent a complete copy of the petition and all accompanying documentation on the same day that the petition is filed with the Commission.

B. Contents of Petition and Documentation

1. A petition for arbitration shall clearly set forth the date upon which the original request for negotiation was received and the dates 135 days, 160 days, and 9 months thereafter.
2. A petition for arbitration shall be accompanied by all relevant documentation concerning the unresolved issues; the position of each of the parties with respect to those issues; and any other issue discussed and resolved by the parties. Relevant documentation includes, but is not limited, to the following:
 - a. A brief or other written statement addressing the disputed issues. The brief should address, in addition to any other matters, how the parties' positions and any conditions requested meet or fail to meet the requirements of 47 U.S.C. § 251; any applicable Federal Communication Commission regulations; and any applicable regulation, order or policy of this Commission.
 - b. Where prices are in dispute, the petitioner shall submit its proposed rates or charges and related supporting materials.
 - c. Any conditions which petitioner requests be imposed.
 - d. A proposed schedule for implementation of the terms and conditions of the agreement.
 - e. The petition may include a recommendation as to any information which should be requested from the parties by the arbitrator pursuant to 47 U.S.C. § 252(b)(4)(B). The recommendation should state why the information is necessary for the arbitrator to reach a decision on the unresolved issues.
 - f. A proposed interconnection agreement.
 - g. Any other documents relevant to the dispute, including copies of all documents in their possession or control on which they rely in support of their positions or which they intend to present at the arbitration.

C. Opportunity to respond. The respondent may respond to the petition for arbitration within 25 days of the filing of the petition. The respondent shall respond to all the specific issues raised in the petition for arbitration.

D. Confidentiality. Petitions, responses, accompanying material, and any documents provided to the Commission pursuant to a request under 47 U.S.C. § 252(b)(4)(B) may be subject to the Arizona public disclosure law. However, a petition or response may include a request for issuance of a protective order.

E. Discovery

1. Parties must cooperate in good faith in the voluntary, prompt, and informal exchange of all documents and other information relevant to the disputed issues, subject to claims of privilege or confidentiality. Parties must exchange copies of all documents relevant to the dispute, including those on which they rely in support of their position or which they intend to present at the arbitration.
2. At the time of filing of a petition for arbitration, or a response, the petitioner may file discovery requests on the responding party, with an information copy provided to the arbitrator.
3. Discovery requests not responded to may be submitted to the arbitrator, with a request that the arbitrator order the discovery, pursuant to 47 U.S.C. § 252(b)(4)(B). The request should indicate an explanation of why the infor-

mation is necessary to reach a decision on the unresolved issues.

4. Failure to cooperate in discovery may be considered as a failure to negotiate in good faith.

F. Appointment and Authority of Arbitrator

1. Arbitrations will be conducted by Commission Hearing Officers.
2. The arbitrator will exercise all authority necessary to conduct the arbitration, subject to the provisions of these rules.
3. The arbitrator may, in the arbitrator's discretion and the extent practical, consolidate proceedings under 47 U.S.C. § 252(b)(4)(B). The request should include an explanation of why the information is necessary to reach a decision on the unresolved issues.
4. The arbitrator may request the assistance of members of the Commission staff in reviewing the petition and accompanying materials, to the extent such staff members have not acted as a mediator with respect to the same interconnection agreement between the same parties.
5. The arbitrator will be authorized to recommend to the Commission a resolution of the disputed issues and any appropriate conditions to be imposed in the form of a Recommended Opinion and Order. The Commission will issue a final decision not later than 9 months after the date on which the local exchange carrier received the request to negotiate.

G. Arbitration Proceeding. Arbitration allows an opportunity for parties to present their positions. However, arbitration does not require sworn testimony or cross-examination of witnesses. Arbitration proceedings will be conducted pursuant to procedures established by the Hearing Officer.

H. Hearing Officer. Each party shall be responsible for bearing its own fees and costs.

I. Any person wishing to comment on the Recommended Opinion and Order may do so by filing written comments with the Commission prior to the Commission's final decision.

R14-2-1506. Filing and Service of Request for Approval of Interconnection Agreement

- A.** An interconnection agreement shall be submitted to the Commission for approval under 47 U.S.C. § 252(e) within 30 calendar days of the issuance of the Commission's final decision on the petition for arbitration, in the case of arbitrated agreements, or, in the case of negotiated agreements, within 30 calendar days of the execution of the agreement. The 30-day deadline may be extended by the Commission for good cause.
- B.** An original and 10 copies of requests for approval shall be filed with the Docket Control section of the Commission. Any party to the agreement may submit a request for approval. Unless filed jointly by all parties, the request for approval and any accompanying materials should be served on the other signatories on the day of the filing.
- C.** A request for approval shall include the documentation set out in this subsection. The materials can be filed jointly or separately by the parties to the agreement, but should all be filed by the 30-day deadline set out in subsection (A).
 1. Negotiated agreements. The following documentation must be filed:
 - a. A complete copy of the signed agreement, including any attachments or appendices;
 - b. A brief or memorandum summarizing the main provisions of the agreement, setting forth the party's position as to why the agreement should be adopted, including a statement as to why the agreement does not discriminate against non-party telecommunications carriers, is consistent with the public interest.

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- convenience, and necessity, and is consistent with applicable state law requirements.
2. Arbitrated agreements. The following documentation must be filed:
 - a. A complete copy of the signed agreement, including any attachments or appendices.
 - b. A brief or memorandum summarizing the main provisions of the agreement, setting forth the party's position as to why the agreement should be adopted, and a statement explaining how the agreement meets each of the applicable specific requirements of 47 U.S.C. § 251, including any applicable Federal Communication Commission regulations.
 - c. Complete and specific information to enable the Commission to make the determinations required by 47 U.S.C. § 252(d).
 3. Combination agreements (arbitrated/negotiated). Any agreement containing both arbitrated and negotiated provisions shall include the foregoing materials as appropriate, depending on whether a provision is negotiated or arbitrated. The memorandum should clearly identify which Sections were negotiated and which arbitrated.
 - D. Any filing not containing the required materials will be rejected and must be refiled when complete. The statutory time lines will not begin until a request has been properly filed.
 - E. Agreements containing both arbitrated and negotiated provisions will be subject to the 30-day deadline specified in 47 U.S.C. § 252(e)(4).

R14-2-1507. Approval Procedure

- A. Unless otherwise ordered by the Commission, a hearing will not be held for a request for approval of an interconnection agreement.
- B. The Commission will enter an order approving or rejecting the interconnection agreement within 30 days of request for approval of arbitrated agreements, and agreements containing both arbitrated and negotiated provisions or within 90 days of request for approval of negotiated agreements with written findings as to any deficiencies.